IN THE HIGHCOURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Misc. Application No. 263 of 2003

Nand Kishore Gupta ..Applicant.

Vs.

Civil Judge (Junior Division) and others ..Respondents.

Hon'ble Irshad Hussain J.

This is a petition under section 482 of the Code of Criminal Procedure for quashing of the criminal proceedings in criminal case No.946/99 Chaudhary Virendre Jung Vs. Nand Kishore Gupta and another under section 138 of Negotiable Instrument Act.

2- Heard Sri Sudhir Singh learned counsel for the petitioner and Sri G.S.Sandhu learned AGC and perused the record of the petition.

3. From perusal of the petition itself it is evident that the summoning order was perhaps passed in the year 1999. The ground taken for quashing of the proceedings is that the notice as contemplated under section 138 of the Negotiable Instruments Act was not served on the petitioner. Annexure-1 is the copy of the complaint which reveal that the notice was initially sent on 22-6-99 by registered post and when the A.D. was not received back and the registered envelope containing notice was also not returned to the sender, another registered letter containing the notice was also sent at the address of the petitioner. The notice was not received back un-served and therefore on the basis of presumption of service the complaint was filed. The learned counsel for the petitioner submitted that the averment of the complaint itself shows that the notice was not served on the petitioner. It is a question of fact which has to be considered from the evidence of complainant which he is likely to adduce under section 244 of the Code of Criminal Procedure and at this stage nothing can be said in favour of the petitioner that the notice was not served on him. The petitioner shall have opportunity to assail the claim of the complainant-respondent that the notice was sent and served on the petitioner.

4- Considering this there is no merit at this stage in this petition and the same is liable to be dismissed.

5- The petition is dismissed in limine.

Dt. 31.10.03 **(Irshad Hussain J.)**

ISB: